

REMARKS / ARGUMENTS:

Claims 1, 3 – 7, 18 and the second claim having the number 29 – 63 have been cancelled without prejudice to their patentability.

New claims 64 – 98 have been added. These new claims are substantial duplicates of the cancelled claims that are identified above as the second claim having the number 29 – 63. The only differences from the original claims are in dependencies and in the final terms of new claim 82 that describe “an active agent”. These terms were left out of original claim 47 in error. Support for these terms can be found in the specification at least at page 50, lines 15 – 18.

Claims 2, 8 – 10, 24 and 28 have been amended.

Claims 2 and 8 have been amended to delete the diazole fungicide. Claim 2 is further amended to clarify that the novel method comprises treating a plant or its propagation material with an effective amount of a triazole fungicide or a strobilurin-type fungicide and planting the treated propagation material and/or growing the treated plant in the substantial absence of pest pressure by fungal plant pathogens against which the triazole, or strobilurin-type fungicide is known to be active, and thereby increasing the vigor and/or the yield of the plant. Support for the features described in amended claim 2 can be found in original claims 2 and 6. The feature of claim 6, which describes the fungal plant pathogens as those against which the triazole, or strobilurin-type fungicide is known to be active, has been incorporated into claim 2, and claim 6 has been cancelled.

Claims 8 – 10, 24 and 28 have been amended to correct dependency.

Duplicate claim warning:

The objection to claims 52 (new claim 87) and 54 (new claim 89) as being substantial duplicates of claims 51 (new claim 86) and 53 (new claim 88), respectively, is noted with respect. However, the Applicant maintains that claim 52 describes subject matter of different scope than claim 51, and that claim 54 describes subject matter of different scope than claim 53. In each case, the higher numbered claim limits the types of *Gaeumannomyces graminis* to the variety *tritici*, whereas the lower numbered claim is not limited to the variety *tritici*, but includes all varieties of *Gaeumannomyces graminis*.

It is respectfully requested, therefore, that the duplicate claim warning be

reconsidered and be withdrawn.

Rejection of claims 1 – 11, 13 and 23 – 60 under 35 USC §112, second paragraph, as being indefinite.

The rejection of claims 1 – 11, 13 and 23 – 60 appears to be based on the use of the phrase “term”. Such phrase is not found in the claims, and clarification of the ground for rejection is respectfully requested.

Claims 1 – 3 and 6 were rejected as being indefinite due to the use of the phrase “pest pressure”, because the phrase is a relative phrase that renders the claim indefinite. The terms “pest pressure” are not found in claims 3 and 6. Claims 1, 3 and 6 have been cancelled. In claim 2, the terms that are employed are “pest pressure by fungal plant pathogens”. These terms are specifically defined in the specification at page 10, lines 16 – 21.

It is maintained, therefore, that the language of the claims would be clear to one of ordinary skill in the art when the claims are read and interpreted in view of the specification.

Rejection of claims 1 – 3, 5, 6, 9 – 11, 13, 24 – 27, 35, 53 and 60 under 35 USC §102(b) as anticipated by the publication by Tsuda *et al.*; BCPC Conference- Pests and Disease, 2:557 – 562 (2000).

The Office has argued that the abstract of the publication by Tsuda *et al.* teaches the application of simeconazole to crop seed at a dosage of 4 – 10 g/ 100 kg of seed, and that it would be inherent that the application of the fungicide would increase the yield and/or vigor of the plant.

The Tsuda *et al.* abstract appears to describe seed treatment with simeconazole for the purpose of protecting the seed and/or the plant from fungal plant pathogens, such as *Basidiomycetes*, and wheat loose smut. At higher dosages, treatment with simeconazole is taught to protect against soil and airbourne diseases such as sharp eyespot, eyespot and powdery mildew. A wheat yield increase of approximately 10% is claimed for simeconazole treatment. However, the focus of the Tsuda *et al.* publication is the use of simeconazole to protect the plant against fungal diseases against which the fungicide is active.

Claims 1, 3, 5 and 6 have been cancelled. However, in contrast with claim 2, and claims that depend therefrom, the method described by Tsuda *et al.* teaches planting simeconazole-treated seeds, or growing simeconazole-treated plants, in the presence of fungal plant pathogens against which simeconazole has activity, whereas, in contrast, the claimed invention discloses the planting of appropriately treated seed, and/or growing treated plants, in the absence of such fungal plant pathogens. It is maintained, therefore, that the teachings of Tsuda *et al.* would likely lead a skilled practitioner away from the method of the present claims. It is believed that the skilled practitioner would not incur the expense of simeconazole treatment unless he/she believed that the seed would be planted, or the plant would be grown, in the presence of fungal plant pathogens against which the fungicide had activity – and, therefore, would not practice the claimed invention.

It is maintained, therefore, that the Tsuda *et al.* reference does not teach each and every element of the claimed method, and would not anticipate the claims. Accordingly, it is respectfully requested that this ground of rejection be reconsidered and be withdrawn.

Rejection of claims 1 – 6, 35 and 51 – 55 under 35 USC §102(b) as anticipated by U.S. Patent No. 4,861,367 to Nyfeler *et al.*

The Office has argued that U.S. Patent No. 4,861,367 to Nyfeler *et al.* (henceforth “Nyfeler”) teaches a method of applying a diazole fungicide to soybean seed, and that this application would inherently increase the yield and/or the vigor of the plant.

Claim 2, and claims that depend therefrom, has been amended to describe the active agent as a triazole or a strobilurin-type fungicide. Nyfeler teaches the use of certain diazole fungicides for the protection of seeds and plants from nematodes, but does not teach the use of triazole or strobilurin-type fungicides for this purpose. Accordingly, it is maintained that Nyfeler does not teach each and every element of the present claims, and, therefore, cannot anticipate the claims. It is respectfully requested that this ground of rejection be reconsidered and be withdrawn.

Rejection of claim 42 under 35 USC §103(a) as obvious over EP 067479 to Simons as applied to claims 1 – 3, 5, 6, 9 – 11, 13, 24 – 27, 35, 53 and 60.

In the Action, the EP 067479 Simons reference is not found to be applied to claims 1 – 3, 5, 6, 9 – 11, 13, 24 – 27, 35, 53 and 60. Accordingly, no response is possible to this ground of rejection and clarification is requested.

Assuming that the rejection is based on the teachings of Simons in view of the teachings of Tsuda *et al.*, as described in the Action, the Applicant would like to respond as follows.

Teachings of the Tsuda *et al.* abstract have been discussed above. The EP 0067479 publication of Simons appears to describe new, improved flowable compositions containing Captan for use as a seed dressing. The Office has argued that it would have been obvious to a skilled practitioner to modify the invention taught by Tsuda *et al.* to include Captan. Original claim 42 (new claim 77) depends ultimately from claim 2. The reasons why the Tsuda *et al.* reference fail to anticipate claim 2 are reasserted here. It is believed that the Simons reference fails to add the teachings that are missing from the Tsuda *et al.* reference, namely that the treated seed or plant is planted or grown, respectively, in the absence of fungal plant pathogens against which the triazole or strobilurin-type fungicides are known to have activity. It is maintained that Tsuda *et al.*, alone or in view of Simons, does not anticipate or suggest the claimed method, because the element described above is not taught in either Tsuda *et al.* or in Simons.

It is respectfully requested, therefore, that the present ground of rejection be reconsidered and withdrawn.

Request for reconsideration:

It is respectfully requested that the amendments that are requested above be entered into the case and that the claims be re-examined in view of the present amendments and the reasons that are discussed above and be found to be allowable. If one or all of the claims are deemed to not be allowable, the Examiner is invited to call the undersigned attorney at the number given below for resolution of any remaining issues.

Respectfully requested,  
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